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SUMMARY

After reviewing extensive comments submitted by professional sports leagues, collegiate athletic conferences, broadcasters, cable sports programmers and other interested parties in response to its initial Notice of Inquiry ("NOI") into the potential "migration" of sports programming from broadcast television to cable programming networks, the Commission tentatively concluded that "the record does not at this time reveal a migratory trend toward cable, either overall or in individual sports." Interim Report, 8 FCC Rcd. 4875 (1993), at ¶85. Affiliated Regional Communications, Ltd. ("ARC") -- which owns and/or manages several regional cable sports networks and actively participated in the NOI proceeding -- supports the tentative conclusions reached by the Commission in the Interim Report and respectfully submits that there is no reason to modify those conclusions.

Since the release of the Interim Report, broadcast networks have reached agreements with the National Football League ("NFL"), National Basketball Association ("NBA"), and several major collegiate associations which ensure that national broadcast coverage of professional and collegiate football and basketball will increase significantly. The new agreements between Major League Baseball ("MLB"), NBC, and ABC will result in a small decrease (i.e. four games) in national broadcasts of MLB games, but there has been no migration to cable where ESPN's new agreement apparently will reduce national cablecasts of MLB games by approximately 50 percent.

The agreements reached or renewed by ARC's regional cable sports networks since release of the Commission's Interim Report confirm that there has been no migration of professional or collegiate sports at the local level. Local broadcasts of NBA games and National Hockey League ("NHL") games have remained constant or increased in each case. No NFL regular season or playoff games are carried on ARC's regional sports networks. Except for an agreement pursuant to which Prime Sports Network-Midwest will carry 40 St. Louis Cardinals games for the first time, ARC's regional cable coverage of MLB games has not increased significantly. Finally, broadcast coverage of collegiate football and basketball contests will increase significantly as a result of new agreements reached by several major collegiate athletic conferences.

Thus, the record demonstrates that there has been no significant migration of sports programming from broadcast to cable television, either nationally or locally. Under the reasoning of the Court of Appeals in Home Box Office, Inc. v. F.C.C., 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977), Commission "anti-siphoning" regulations for sports programming would be wholly unjustified in any event. Finally, the Commission's concerns over the cost and availability of regional cable sports programming to viewers -- concerns which are irrelevant in the absence of migration -- are addressed directly by other Commission regulations.

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Implementation of Section 26 of the
Cable Television Consumer Protection
and Competition Act of 1992

Inquiry into Sports Programming
Migration

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) PP Docket No. 93-21
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**FURTHER COMMENTS OF
AFFILIATED REGIONAL COMMUNICATIONS, LTD.**

Affiliated Regional Communications, Ltd. ("ARC") submits these comments in response to the Commission's Further Notice of Inquiry ("Further Notice") in this proceeding. The record confirms that sports programming has not "migrated" from broadcast to cable television and that marketplace forces have operated effectively to provide the maximum diversity of sports programming for viewers. In short, "migration" of sports events from broadcast to cable is not a problem in need of a legislative or regulatory remedy.

Description Of ARC And Its Interest In This Proceeding

ARC provides regional and national sports programming for distribution to cable operators and other multi-channel video programming distributors. ARC has ownership interests in eight regional sports programming services which produce and distribute programming featuring a variety of

sporting events, including professional and collegiate contests involving teams from their respective regions. The regional sports services sell programming to operators of cable and other multichannel video programming distribution systems within their service areas. ARC also has a separate division which serves home satellite dish ("HSD") owners either directly or through agreements with other wholesale program packagers.

Together with NBC Cable Holding, Inc. and Rainbow Holdings, Inc., ARC also has an ownership interest in Prime SportsChannel Networks, which distributes two national satellite sports programming networks, NewSport and Prime Network. Prime Network currently serves as a "backdrop" feed, providing supplementary programming to affiliated regional services. Thirteen additional regional sports services are programming affiliates of Prime Network,¹ which also is available to HSD owners.

Introduction

Congress directed the Commission to "investigate and analyze, on a sport-by-sport basis, trends in the migration of

¹ The eight regional sports programming services in which ARC has an ownership interest and thirteen other regional services which are affiliated with Prime Network and their respective geographic service areas are listed in Exhibits 1 and 2. The programming on these regional services generally includes professional baseball, basketball and/or hockey, collegiate contests, and a variety of other sporting events and sports-related programs.

such programming from coverage by broadcast stations to coverage over cable programming networks and pay-per-view systems." See Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") at §26. For purposes of its investigation, the Commission has defined "migration" as the "movement of sports programming from broadcast television to a subscription medium." See Further Notice at ¶3.

After reviewing extensive comments submitted by professional sports leagues, collegiate athletic conferences, broadcasters, cable sports programmers and other interested parties in response to its initial Notice of Inquiry, 8 FCC Rcd. 1492 (1993) ("NOI"), the Commission "tentatively" concluded that "the record does not at this time reveal a migratory trend toward cable, either overall or in individual sports." Interim Report, 8 FCC Rcd. 4875 (1993), at ¶85.

However, in the Further Notice the Commission has expanded the scope of its inquiry to include a variety of issues which appear to be largely irrelevant to the study mandated by Congress. For example, the Commission now seeks comment on "why the increase since 1980 in cable exhibition of sports events has been much greater than the increase in broadcast exhibition," apparently ignoring its own definition of "migration." Further Notice at ¶13 (emphasis added). Likewise, despite finding no "migratory trend toward cable," the Commission now seeks comment on the location of homes without access to cable "in order to determine if access prob-

lems disproportionately affect potential viewers of certain teams' games." Id. at ¶12. In addition, after conducting an extensive survey and releasing several reports and orders totalling over one thousand pages in adopting new cable rate regulations over the last year, the Commission now seeks "information regarding the cost of subscribing to the cable services that provide sports programming" in this proceeding. Id.

Although it has endeavored to provide responsive information where available, ARC respectfully submits that such inquiries are irrelevant to the Commission's examination of any "migration" of sports programming. The Commission should not permit this proceeding to become a forum for wide-ranging examinations of cable subscription rates, speculation into the causes for relative increases in cable and broadcast sports programming, predictions about the future effects of new technologies or exploration of a variety of other unrelated issues identified in the Further Notice. Rather, the Commission should focus on the facts presented by the parties, which confirm that there has been no significant "movement of sports programming from broadcast television to a subscription medium." See Further Notice at ¶3.

I. Developments Since The Interim Report Support
The Commission's Tentative Conclusion That
There Has Been No Significant Migration Of
Sports Programming To Cable.

In its initial NOI, the Commission defined "migration" for purposes of its Inquiry as "the movement of sports programming from broadcast television to a subscription medium (i.e. one for which viewers pay a fee)." NOI at ¶2. After reviewing the extensive factual record developed in response to the NOI, the Commission found no evidence of significant "migration" of sports programming, either in general or with respect to any of the professional or collegiate sports which it examined:

- "NFL and college basketball games have not migrated to cable television and are in little danger of doing so;"
- "[M]igration of NBA, MLB and NHL games has not taken place at the national level, and...local migration has been isolated and relatively slight;"
- "With respect to college football, we do not believe that games previously available to broadcast television have moved to cable television;" and
- While "the number of sports events shown on cable television has increased since 1980..., [i]t does not appear, however, that this increased cable exposure has led to a concomitant decrease in the number of sporting events shown on broadcast television; to the contrary, broadcast exposure has increased in some cases".

Interim Report at ¶¶85-86.² Developments since the release of the Commission's Interim Report confirm those tentative conclusions.

A. Professional Football

The Commission's Interim Report tentatively concluded that "professional football has experienced no migration, as all regular season and post-season games are shown on broadcast television." Interim Report at ¶27. In fact, no commenter suggested that National Football League ("NFL") games have "migrated from broadcast to cable television." Id. However, the Commission noted that NFL contracts with the three broadcast networks, ESPN and Turner Network Television ("TNT"), all were scheduled to "expire following the 1993 season." Id. at ¶23. Consequently, the Commission now seeks information about the new contracts. Further Notice at ¶19.

With the exception of the CBS contract, all of the previous NFL contracts have been renewed. Further Notice at n.12. However, the contract rights to televise National Football Conference ("NFC") games were awarded to Fox Network ("Fox") rather than CBS, and the Commission now seeks comment "on whether the movement of NFC games from CBS to Fox will

² The record also contained substantial and undisputed evidence that cable sports programming services have televised a wide variety of professional, collegiate and other amateur sports events which had never been carried on broadcast television. Interim Report at ¶¶67-68.

affect the availability of games via broadcast television." Id. at §19.

ARC respectfully submits that the answer is irrelevant to the issue of "migration." The new contract shifted coverage of NFC games from one broadcast network to another broadcast network, not to cable. The audience reach of the Fox Network as compared with the CBS Network is irrelevant to the "movement of sports programming from broadcast television to a subscription medium." The new agreements do not provide an opportunity for any ARC regional network to carry NFL regular season or playoff games. In short, nothing has happened since the Interim Report to warrant reconsideration of the tentative conclusion that "professional football has experienced no migration."

B. Professional Basketball

Based on the record developed in response to the NOI, the Commission tentatively concluded that "there has not been significant migration of professional basketball telecasts from broadcast to cable television." Further Notice at §20. Since release of the Interim Report, no developments have occurred to change the Commission's tentative conclusion regarding National Basketball Association ("NBA") games. If anything, broadcast coverage of NBA games has increased.

As the Commission has noted, the NBA has executed new agreements with NBC and TNT for national exhibition of

league games. Further Notice at ¶21. Under the new agreement, NBC will continue to retain the right to televise approximately 25 regular season and 28 playoff games. In addition, it has been reported that the new NBA agreements will "assure that every NBA playoff game will have some form of on-air exposure." See Broadcasting and Cable, Sept. 27, 1993, at 28.

There also does not appear to have been any migration of NBA games at the local level. Since the Interim Report was released, local broadcast coverage of NBA games has increased for each team with which an ARC service has entered or sought to renegotiate a contract. On November 1, 1993 the Utah Jazz and Prime Sports Network-Intermountain West ("PSN-IW") renewed their prior agreement -- which provides for PSN-IW carriage of 5 home games and 20 away games during the regular season -- for an additional three-year period. However, ARC understands that local broadcast station KJZZ, which is commonly owned with the Jazz, retains the right to broadcast at least 8 home and 20 away games during the regular season, as well as all away playoff games. See Broadcasting and Cable, Oct. 4, 1993, at 49. In contrast, only 24 regular season Jazz games were scheduled to be broadcast locally during the 1992-93 season. See NBA Initial Comments at Exhibit 6.

The Sunshine Network entered into an agreement with the Miami Heat in August 1993 which provides for Sunshine carriage of 35 home and 10 away games during the regular season

-- the same as its prior contract. However, ARC understands that approximately 24 away games will be broadcast locally during the regular season, up from 20 games scheduled for broadcast last season. See NBA Initial Comments at Exhibit 6; Broadcast and Cable, Oct. 4, 1993, at 48. If the Heat makes the playoffs, Sunshine will carry home games during the first two rounds and away games will be broadcast locally.

Finally, the San Antonio Spurs dropped the cable coverage previously provided by Home Sports Entertainment ("HSE"). Last year, 22 Spurs games were broadcast locally, and HSE carried 29 games. See NBA Initial Comments at Exhibit 6. This year, KSAT apparently will broadcast 25 games and KABB will broadcast 16 games while HSE will carry no Spurs games on cable. It has been reported that the Spurs will offer 20 games on a pay-per-view ("PPV") basis (see Broad-casting and Cable, Oct. 4, 1993, at 49), which represents a slight decrease in the number of Spurs PPV games reported last year. See NBA Initial Comments at Exhibit 6.

Based on ARC's experience, developments since the Interim Report indicate that national and local broadcasts of NBA basketball have increased while regional cable coverage has remained the same or decreased. Thus, there is no reason for the Commission to alter its tentative conclusion that "[i]t does not appear...that professional basketball has migrated from broadcast to cable television to a significant

extent, either at the national or local level." Interim Report at ¶34.

C. Professional Baseball

The Commission tentatively has concluded that "migration of...MLB [Major League Baseball] games has not taken place at the national level, and...it appears that local migration has been isolated and relatively slight." Interim Report at ¶86. Developments since release of the Interim Report indicate that: (a) national broadcasts of MLB playoff games will increase as a result of new television contracts and league restructuring; (b) national broadcasts of MLB regular season games will decrease slightly while national cablecasts of MLB will decrease substantially; (c) there has been no migration to cable at the local level.

Since release of the Interim Report, MLB has restructured the American and National leagues to include three divisions in each league and to provide for another round of approximately 20 playoff games. All of the additional playoff games will be shown on broadcast television. See Interim Report at n.83. In short, there has been and will continue to be no "migration" of post-season MLB games to cable.

National broadcast and cable telecasts of regular season MLB games have decreased -- with a far more substantial decrease in national cablecasts. Specifically, the new MLB

venture with ABC and NBC will result in 12 prime-time network broadcasts, down from 16 network broadcasts reported last year. See Interim Report at Chart 7; Comments of the Office of the Commissioner of Baseball, filed March 29, 1993 ("MLB Initial Comments"), at 16; Broadcasting and Cable, May 31, 1993, at 11. MLB's new agreement with ESPN will result in national cable coverage of 70 to 80 regular season games -- only about half the number of games carried by ESPN last year. Broadcasting and Cable, Sept. 13, 1993, at 15; see also MLB Initial Comments at 20 (over 150 ESPN telecasts of MLB games in 1993). These developments support the Commission's conclusion that the decline in national broadcasts of MLB games is "a function of declining ratings rather than migration to cable." Further Notice at ¶22.

Agreements executed or renewed by ARC regional sports networks and MLB teams since release of the Interim Report have not resulted in any significant migration of MLB games at the local level. For example, KBL carried 59 Pittsburgh Pirates games in 1993 and will carry 60 Pirates games this year under a new agreement. See MLB Initial Comments at Exhibit E; Broadcast and Cable, March 14, 1994, at 36-37. Home Team Sports ("HTS") will carry approximately 78 regular season Baltimore Orioles games this year under its new agreement, down from 85 games last year. Id.

Finally, the St. Louis Cardinals have signed an agreement with Prime Sports Network-Midwest ("PSN-M") for

carriage of Cardinals games on cable for the first time in five years. Although PSN-M will now carry 40 regular season games, approximately 60 regular season games will be broadcast locally, compared to 77 last year. This reduction in the number of local broadcasts occurred only after local broadcasters, which had been offered an 80-game package, and the Cardinals were unable to come to terms on that package.³ Thus, recent developments further support the Commission's tentative conclusion that MLB games have not migrated to subscription services.

D. Professional Hockey

The Commission tentatively has concluded that telecasts of professional hockey have not "migrated from broadcast to cable on the national level," largely because there had been no national broadcast coverage of professional hockey for over ten years preceding release of the Interim Report. Interim Report at ¶53. On the local level, the Commission noted that broadcasts of NHL games had declined by a total of 45 games between 1981 and 1993 and concluded that it

³ Apparently, the 80-game package presented carriage problems for certain broadcast stations other than the "flagship" station of the Cardinals broadcast "network." Of the 22 full-power stations identified in Exhibit D of the MLB Initial Comments as members of the Cardinal "network" (other than the flagship station), no fewer than 15 are affiliated with one of the four broadcast networks, including at least 10 previously independent stations now affiliated with the Fox network. The difficulty in clearing 80 games in these markets in the face of network broadcast schedules apparently created a significant problem for the full broadcast package.

did "not consider this slight decline a cause for concern."

Id.

Developments since release of the Interim Report support the Commission's tentative conclusions. For example, the Commission stated that it was "particularly interested" in the "PPV exhibition of playoff games by...the (former) Minnesota North Stars." Further Notice at ¶26. In 1993, the Minnesota North Stars moved to Dallas. This year, pursuant to the new television package negotiated by the Dallas Stars, local broadcasts and regional cable coverage of Stars games will increase, and there are no provisions for PPV carriage of playoff games.⁴

E. College Football

The Commission reported that commenters did "not contend that [college football] games previously broadcast have migrated to cable" and that there is only "limited concern" about migration with respect to college football. Interim Report at ¶¶59-60. The Commission has noted that since release of the Interim Report, several collegiate ath-

⁴ During the 1992-93 season, 15 regular season home games of the Minnesota North Stars were carried on a regional cable sports network and 25 away games were carried on a local broadcast station. Three home playoff games were carried on PPV cable, and 4 away playoff games were broadcast locally. See Comments of the National Hockey League submitted March 29, 1993 ("NHL Comments"), at Appendix p. 3. This year, 13 home and 7 away regular season games of the Dallas Stars will be carried on HSE, and 3 home and 27 away regular season games will be broadcast locally.

letic conferences which are members of the College Football Association ("CFA") have signed separate television contracts with broadcast networks. Further Notice at ¶¶7, 30. These developments should eliminate any concern over the potential migration of college football or effect of "preclusive" contract provisions because they ensure that more college football games will be available on broadcast television than ever before.

For example, the Big Eight Conference ("Big Eight"), a CFA member, has reached agreements in principle with ABC and ARC for television coverage of football games hosted by Big Eight teams beginning in 1996 and continuing through 2000. Pursuant to the new agreements, ABC will have the right to televise up to 36 "appearances" by Big Eight teams each year, and ARC will have the right to televise up to 20 additional Big Eight games. ABC will have priority in selecting games to be televised, except that ARC will be permitted to submit a list of ten games to the Conference each year, from which it will be assured one game not subject to preemption by ABC.

Under the new agreement with the Big Eight, ARC will have the right to televise two Thursday night prime time games, eight Saturday night prime time games and ten "early window" (i.e. approximately 12:30 Eastern Time) Saturday games. ABC will have the right to televise the late window (i.e. 3:30 Eastern Time) games every Saturday and the right to two "early window" selections for "double-headers" on two

Saturdays during the season. ARC currently plans to televise the Thursday and Saturday night games only on Prime Network. However, it intends to syndicate the Saturday "early window" games to local broadcast stations throughout the Big Eight television markets and to supplement the "inner market" broadcast coverage with cable distribution in non-Big Eight television markets. Under the new Big Eight agreements, more college football games featuring Big Eight teams will be televised -- both on broadcast and cable -- than ever before.

ARC understands that several other collegiate athletic conferences, including the Big East Football Conference, the Atlantic Coast Conference, the Southeastern Conference, the Big 10 and the Pac 10 have negotiated separate agreements with ABC or CBS. In addition, other "independent" schools have negotiated their own television agreements, such as the Notre Dame agreement with NBC. The television rights for non-conference or "crossover" games will be determined in accordance with the television package of the host school or conference. These developments should eliminate any concern over the potential "migration" of college football games from broadcast to cable television because more games will be available through each medium.

F. College Basketball

The Commission tentatively concluded that there was "no evidence of migration of college basketball games to sub-

scription media." Further Notice at ¶27. Again, new agreements between several collegiate athletic conferences and broadcast networks since release of the Interim Report confirm the Commission's conclusion. For example, the Southeastern Conference and Big East Conference have negotiated agreements with CBS for national broadcast rights to their basketball games through the year 2001. See Broadcasting and Cable, Feb. 21, 1994, at 15. At the local level, collegiate athletic conferences generally give priority to broadcast coverage and supplement that coverage wherever necessary with cable. See, e.g., Comments of the Big East Conference, submitted March 29, 1993 ("Big East Initial Comments"), at 1, 4; Comments of the Atlantic Coast Conference, submitted March 29, 1993, at 1, 3. For example, the Big East routinely requests regional cable networks to "black-out" games in areas served by a local broadcast affiliate of the "Big East Network." See Big East Initial Comments at 6.

G. Other Sports

The Commission has requested comment on "any other sports...or relevant topics," including any "other college sports matter relevant to the Commission's sports programming migration investigation." Further Notice at ¶¶17, 32. Further, the Commission has asked why cable coverage of sports events has increased faster than broadcast coverage. See Further Notice at ¶¶13-14. The simple answer is that cable

sports networks, particularly regional sports networks, televise a wide variety of sporting events never previously carried by broadcast television. The Interim Report referred to numerous sports and sporting events which have been televised for the first time on cable, particularly by regional cable sports networks. Interim Report at ¶¶67-68. ARC respectfully requests that the Commission acknowledge that cable's coverage of these events has resulted in substantial benefits for viewers as well as for the conferences, schools, athletes and other organizations which have received significant television exposure for the first time.

In addition, unlike broadcast stations which face significant pressures to clear network provided programming during most of their broadcast day,⁵ regional cable sports networks are devoted exclusively to sports and can experiment with coverage of new sports events. In several cases, events which were first carried on cable sports networks have eventually gained sufficient popularity to attract the attention of broadcasters. Women's college basketball and professional beach volleyball are just two examples of sports which gained a following on cable before "reverse migrating" to broadcast

⁵ Apparently, many formerly independent stations decreased or dropped coverage of sports events in order to accommodate the Fox network program schedule when they became Fox affiliates. See n.3, supra. Recently announced plans by Paramount and Time Warner to launch additional broadcast networks could similarly affect local broadcast carriage of sports events.

television. For these sports, broadcast television viewers have reaped the benefits of cable's ability to experiment with alternative sports programming.

Finally, regional cable sports networks provide other benefits to the teams, schools and organizations whose events they televise. For example, the Commission has long recognized that the public interest may be served in many ways through the local origination of programming. By providing television coverage for the first time to teams from local universities, colleges and high schools -- and to events sponsored by organizations such as the Special Olympics -- regional cable networks make real and significant contributions to the communities in their regions. See, e.g., Comments of Texas Special Olympics, University Interscholastic League and Colorado Athletic Conference, submitted March 29, 1993. ARC respectfully submits that these attributes of regional cable sports networks should not be ignored in any discussion of the public interest implications of cable sports programming in the Commission's final report to Congress in this proceeding.

**II. There Is No Public Interest Justification
For Recommending "Anti-Siphoning" Regulations.**

The Commission also "invite[s] comment on whether there is a public interest in government action to promote free access to sports programming." Further Notice at ¶11. ARC respectfully submits that the public interest would not

be served by such government action, which appears to be inconsistent with fundamental principles of free enterprise and free speech. In fact, the United States Court of Appeals for the District of Columbia Circuit previously found no reasonable public interest justification for imposition of "anti-siphoning" restrictions on cable carriage of sports programming. Home Box Office, Inc. v. F.C.C., 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977). The Commission should not reach any different result here.

In HBO, the Commission sought to justify rules intended "to prevent siphoning of...sports material from conventional broadcast television to pay cable" by equating "the public interest to the retention of the conventional broadcast structure." 567 F.2d at 28. Specifically, the Commission maintained that it was obligated to impose anti-siphoning regulations because "the overall level of public enjoyment of television entertainment would be reduced if...sports events were shown only on pay cable or shown on conventional television only after some delay." Id. at 29. Thus, the Commission maintained that the public interest supported "government action to promote free access to sports programming" on broadcast television.

The Court of Appeals flatly rejected these Commission rationales for such regulation. In addition to the Commission's consistent position that "it has no statutory authority to dictate entertainment formats," the Court con-

cluded that there was no reasonable basis upon which the Commission "could define the current level of [broadcast sports] programming as a baseline for adequate service" to the public. Id. at 30-32. In particular, the Court criticized the Commission for attempting to make that determination without having any evidence regarding the nature of, and level of audience satisfaction with, the broadcast programming which replaced the sports programming allegedly "siphoned" by cable. Id. at 31-32. The Further Notice seeks none of this information from local broadcasters or any other proponent of anti-siphoning rules, despite the fact that the record developed in response to the NOI included numerous examples of broadcasters dropping sports programming in favor of network or syndicated entertainment programming.⁶ Absent such information, there is "no reason to think that cutbacks [in broadcast sports coverage] represent siphoning any more than they represent editorial or commercial judgment." 567 F.2d at 51. There is simply no factual basis upon which the Commission could conclude that: (1) current levels of broadcast sports programming constitute the minimum "baseline for adequate service" to the public; or (2) any decline in previous levels was

⁶ See MLB Initial Comments at 8; Comments of Tribune Broadcasting Company, submitted March 29, 1993, at 4; Comments of Rainbow Programming Holdings, Inc., submitted March 29, 1993, at 17; see also Further Notice at ¶22 (reduction in broadcast coverage of major league baseball "appears to be a function of declining ratings rather than migration to cable").

the result of "migration" of sports programming rather than "expansion" of broadcast network entertainment programming more attractive to local broadcasters.

Finally, even if the Commission could reasonably determine that the "current quantity and quality levels of... sports events" on broadcast television represent the "minimum level consistent with adequate [broadcast] television service" to the public, the Commission must be "prepared to require broadcasters to continue to present material presently on conventional television" in order to ensure the minimally acceptable level of service. Id. at 32 (emphasis in original). In short, INTV and other proponents of anti-siphoning rules cannot have it both ways. The public interest could not be served by limiting cable carriage of certain sports events ostensibly in order to "preserve" a minimally acceptable level of their carriage on broadcast television and allowing broadcasters the unfettered discretion to drop those events in favor of non-sports programming which might yield higher audience ratings. The Court of Appeals already has determined that rules which leave "broadcasters free to choose" whether to carry certain sports events "without any competition from cable television" will result in an unreasonable curtailment of "the flow of programming to those served by cable and willing to pay for it, with a consequent loss of diversity and unnecessary restriction of the First Amendment rights of producers, cablecasters and viewers." Id. at 50.